United States Circuit Court of Appeals

GEORGE MCMANUS,

Libellant-Appellee,

against

MARINE TRANSPORT LINES, INC.,

Respondent-Appellant.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINT I

The award of wages in addition to medical expenses and maintenance was a proper exercise of the judicial power of a Court of Admiralty.

The libellant, a licensed chief engineer, employed as assisting engineer on a tug engaged in navigation on the waters of the United States, sustained in the course of his work for the respondent a laceration of his shin which became infected. He continued to work until his period of service by the month had expired and he had been paid and had become engaged as engineer on a vessel that was to make a trip to the war zones. However, when he was examined by a doctor for his new employer, he was rejected, and began supplementing the treatment of a private physician by attending a U. S. Public Health station. His cure was not accomplished in time for him to make the intended voyage at wages of about $800.00 a month including war bonuses for which he had been

orally hired at wages fully as large again as his wages on the canal tow-boat "L. T. C. I." where he sustained the laceration which became ulcerated.

The trial judge Murray Hulbert, worthy successor to Betts J. Brown, J. and Hough, J. seeped with knowledge of the principles and spirit of Admiralty Law announced his decision after an accurate review of the facts at folio 260:

> "Now I am sympathetic with the principle that in these cases, seamen are wards of the court, but I am not disposed to give a man anything that I do not think he is entitled to. I do think he is entitled to something in this case, and I think that the most I could conscientiously allow him is $250.00, and I therefore make the following findings of fact as to the second cause of action" (fol. 260 of the record).

To Action: The dates, times and places of libellant's injury and treatment are stated in the next paragraph of the court's opinion.

Before the learned U. S. Circuit Court of Appeals we endeavored to show that the Court of Admiralty of the United States has inherent equity power in adjudicating the rights of mariners in cases of maintenance and cure, to do just what this Admiralty Judge naturally did—but not a word of discussion of this principle has resulted—we have only the conventional opinion, (*pro curiam*) and impersonal, that it approves of the rule in the *Geiger* Case (261 Fed. 275), Sixth Circuit (1918). In that case in which we think the Circuit Court was heartless and wrong. A trial judge has awarded a seaman $377.14 as wages in addition to $130.00 for maintenance (13 weeks at $10.00 a week) for the loss of a finger which the court found was not due to his fault, but was caused by the negligence of a fellow servant. The decision of this Court in *Chelentis* (247 U. S. 372) had just come down. It does not appear that the learned District Judge had

also read *Quebec* v. *Merchant,* 133 U. S. 375, but we think that Judge Westerhaver read what was said by the very great lawyer Joseph Story in *Harden* v. *Gordon*:

> "It need hardly be said, that courts of admiralty in the administration of their duties, seek to follow the general principles of justice, rather than technical rules, and consequently avail themselves more of doctrines founded in general equity, than in the inflexible strictness of the common law. They have not the rashness to impute blame to the latter, for they are not insensible to its excellence. But they understand, that the common law does not affect to apply remedies to all cases of injustice, and leave to other courts the full right to pursue a more enlarged equity, whenever their constitution enables them to favour and support it."

We argued this before the Circuit Court of Appeals to no avail, and we now urge upon this Court, because we think that the decision of the U. S. Circuit Court leaves the Admiralty Law in a static condition, which can be remedied only by the Court that gave us the *Aguilar* decision 1943, A. M. C. 451.

We put before the Circuit Court the language of Justice Story at page 481 of *Harden* v. *Gordon* (Fed. C. 6047):

> "Supposing that by the principles of law, the seamen are entitled in case of sickness to be healed at the expense of the ship, I am of the opinion, that the claim for such expenses, may be enforced in the Court of Admiralty. It constitutes in contemplation of law, a part of the contract for wages, and it is a material ingredient in the compensation for labor and services of the seamen."

and at page 482 the following for the same case:

> "In the Maddonna D'Idra, 1 Dods. 37, where a claim was made on behalf of Greek sailors for subsistence

> after their discharge from the ship, as well as for antecedent wages, the court did not hesitate to decree it. 'It is', said the learned judge on that occasion, 'wages paid in another form, it is part of the compensation for their labour; and according to the law of the country, to which these men belong, subsistence in the intermediate time must be presumed to form part of the contract for the payment of wages'. In what respect does subsistence in case of a discharge differ from additional subsistence in case of sickness? To use the language of the court it is but 'wages in another form', additional wages to meet additional expenses, and constituting if the maritime law and usage uphold the claim, a part of the contract."

Justice Story as Circuit Judge in the exercise of admiralty power in 1823 created for us the doctrine of maintenance and cure. Had he seen fit in 1823 to have awarded wages as well as maintenance and cure expenses, we would not, of course, have to bring this case to this court in 1945. The learned Circuit Court has in its opinion made not the slightest reference to our suggestion that the Admiralty Law as the Common Law was susceptible but accustomed to expansion and growth to the needs of a changing democratic world. We pointed out and reiterate that seamen did not receive wages to the end of the voyage in addition to maintenance until this court so decided in the *Osceola* case, 189 U. S. 158: that the doctrine of maintenance and cure was not applicable to seamen on harbor craft until Judge Hough harmonized the cases and established the rule in the Bouker No. 2, 241 F. 275, in 1916.

That the same Judge had literally ruled that a wireless operator on a merchant vessel was entitled to maintenance and cure from the vessel owner, although his wages were paid by a third party (The Marconi Company) *Buena Ventura,* 243 Fed. 797.

We urge this Court to grant this petition for a writ of certiorari because we think that a decision of the principles involved will result in improved administration of the admiralty law. Not all U. S. Circuit Judges have had experience in admiralty; in the Geiger's case and in the case at bar, there was no extravagant taking of the employer's funds. There is no reason to suppose that other judges will act improvidently. The allowance made by the District Judge in each instance, $377.14 in Geiger's case and $150.00 in McManus', while small sums to add to the owners deductables for income tax statements, would go a long way towards paying expenses of the families of seamen Geiger and McManus.

The District Court in each instance more familiar with the letter and spirit of the maritime law, has made decisions that were fatherly and kindly, and in the interest of their wards. The United States Circuit Court has in each instance nipped the budding efforts with frosty breath.

It is because there is a Supreme Court of the United States that has recently said:

> "An obligation which thus originated and was shaped in response to the needs of seamen for protection from hazards and peculiarities of marine employment should not be narrowed to exclude from its scope characteristic and essential elements of that work. And, indeed, no decision has been found which so narrows the shipowner's parallel obligation in the case of sickness or disease. Rather the implications of existing authority point the other way. Cf. The Bouker No. 2, supra. The considerations, including those of public interest adverted to by Mr. Justice Story, which support the liability for illness, or for injuries received aboard ship, likewise sustain it for injuries incurred on shore leave, as were those now in issue. To exclude such injuries from the scope of the liability would ignore its origin and purposes."
>
> *Aguilar* 1943, A. M. C. 451-460.

The Admiralty Court exercises its power in an equitable manner.

Hough, J., speaking of Judge Choate, said:

> "He was particularly qualified by native habit and mind to apply to the admiralty the principles of Equity." Charles Merrill Hough in his posthumously published. United States District Court.

Justice Story in *Harden* v. *Gorden* (Fed. case 6047) at page 487, said:

> "It need hardly be said, that courts of admiralty in the administration of their duties, seek to follow the general principles of justice, rather than technical rules, and consequently avail themselves more of doctrines founded in general equity, than in the inflexible strictness of the common law. They have not the rashness to impute blame to the latter, for they are not insensible of its excellence. But they understand, that the common law does not affect to apply remedies to all cases of injustice, and leave to other courts the full right to pursue a more enlarged equity, whenever their constitution enables them to favour and support it."

POINT II

The judicial determination that a District Judge in Admiralty has the power to award in addition to expenses of maintenance and cure, an additional amount to make up for lost earnings is needed.

There are as every practicing lawyer for seamen knows, cases occasionally arising where seamen have been seriously injured through no fault of themselves or their employer, or co-servants. If an admiralty judge has this power, and the facts, McManus and Geiger cases will illustrate the need. Justice could always be done, or at

least there would be fewer cases like Geiger's, or like the mariner in the *Henry B. Fisk,* 141 F. 188. See page 189—where Judge Dodge on a finding of fact that today would have resulted in an award of $20,000.00,—Kriakyos 1945, A. M. C. 439, felt constrained to give the seaman only $111.81.

The admiralty law is a growing, expanding, equitable and efficient agency of our changing world as this court recently said, in the *Aguilar, supra,* 1943 A. M. C. p. 457:

> "Other recent cases however disclose a tendency to expand these traditional exceptions."

The Courts of Admiralty have exercised equity power to invalidate releases executed by improvident mariners where the releases purported to "release every right he had or expected to have", and the Honorable Circuit Court has sustained the District Judges in so doing, and this court denied a writ, 1939 A. M. C. 1597. A copy of this release appears at 1940 A. M. C. 1292, *i. e.,* 1939 A. M. C. 585-1597; *Stuart* v. *Alcoa,* 1944 A. M. C. 910.

The reinstatement of the decree and award of the U. S. District Court will improve the efficiency of the Admiralty Court in the doing of justice in those cases where a finding of negligence cannot be made on the true facts, and yet, where the damage to the seaman has been so serious that an award for maintenance and cure is not adequate by present day standards.

Respectfully submitted,

Silas B. Axtell,
Attorney for Petitioner.

Lucien V. Axtell,
of Counsel.